

AUG 01 2006

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

IMELDA MORATAYA,

Petitioner,

v.

ALBERTO R. GONZALES, Attorney
General,

Respondent.

No. 04-72865

Agency No. A70-219-871

MEMORANDUM*

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted July 24, 2006**

Before: ALARCÓN, HAWKINS, and THOMAS, Circuit Judges.

Imelda Morataya, a native and citizen of Guatemala, petitions for review of the Board of Immigration Appeals' ("BIA") order denying her motion to remand and dismissing her appeal from an immigration judge's ("IJ") order denying her

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

motion to reopen deportation proceedings conducted in absentia. We have jurisdiction pursuant to 8 U.S.C. § 1252. We review for abuse of discretion, *Singh v. INS*, 213 F.3d 1050, 1052 (9th Cir. 2000), and grant the petition for review.

Morataya moved to remand on the ground that the IJ should not have denied her motion to reopen as untimely because the Order to Show Cause (“OSC”) was not properly served. *See* 8 C.F.R. § 1003.23(b)(4)(iii)(A)(2) (motion to reopen deportation proceedings conducted in absentia may be filed at any time if the alien did not receive notice). In denying Morataya’s motion to remand, the BIA applied the service requirements for notices of hearing rather than OSC’s. *See Matter of M-D-*, 23 I. & N. Dec. 540, 544 (BIA 2002) (explaining that the service requirements for notices of hearing differ from those for OSC’s). We remand to the BIA to consider whether, applying the correct standard, the OSC was properly served.

PETITION FOR REVIEW GRANTED; REMANDED.